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ABSTRACT

In his presentation at the start of the seminar, the author argues that the total commitment of civil rights groups to school integration as the sole means for enabling black children to obtain the "equal educational opportunity" guaranteed them by the Supreme Court is not only obsolete policy, but reflects a wasteful, dangerous and demeaning refusal to consider alternative remedies at a time when meaningful school desegregation is virtually impossible in many communities. The insistence on integrating every public school that is black perpetuates the racially demeaning and unproven assumption that blacks must have a majority-white presence in order to either teacher or learn effectively. This assumption limits the definition of "integrated schools" to those which are predominantly white. The current massive commitment to school integration by the national office of the NAACP, the Legal Defense Fund, and virtually every other legal agency with sufficient legal and financial resources to effective represent the educational interests of black and other minority group students, is questionable on grounds of: (1) historical precedent; (2) parental priorities; (3) educational expertise; and, (4) legal strategies. (Author/JM)

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SCHOOL DESEGREGATION: CONSTITUTIONAL RIGHT OR OBSOLETE POLICY?

Derrick A. Bell, Jr.*

Introduction

In my view, the answer to the question posed in the title of this article is this: The total commitment of civil rights groups to school integration as the sole means for enabling black children to obtain the "equal educational opportunity" guaranteed them by the Supreme Court two decades ago in Brown v. Board of Education[1] is not only obsolete policy, but reflects a wasteful, dangerous, and demeaning refusal to consider alternative remedies at a time when meaningful school desegregation is virtually impossible in many communities.

Total reliance on school integration is wasteful because it deprives courts and governmental civil rights agencies of the flexibility needed to formulate viable educational remedies in situations where school desegregation is not feasible because of geographical conditions, population concentrations, or financial limitations. The absence of such alternative remedies condemns thousands of black children to remain in racially-isolated and educationally-bankrupt schools.

Continuing pressure for school integration under all conditions, regardless of its cost and disruptive potential,

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and while the educational (as opposed to constitutional) benefits to be obtained are unproven, is dangerous. Such pressure is slowly eroding the judicial support for school desegregation built up over the years. Courts are refusing to approve desegregation plans that call for great expenditures of money, time, and effort, and are giving increasing attention to the "frustration of innocent Americans who scrape and save money to buy a home in a nice residential neighborhood, near a public school . . . [and] find their plans have been destroyed by the judgment of a federal court."[2]

Finally, the insistence on integrating every public school that is black, perpetuates the racially demeaning and unproven assumption that blacks must have a majority-white presence in order to either teach or learn effectively. This assumption mars the potential psychological benefit of education for blacks by limiting the definition of "integrated schools" to those which are predominantly white. More importantly, it casts blacks in the role of subordinates in every aspect of the public school process, enabling school systems to boast that they have complied with Brown, while effectively relegating black children to a status that all too frequently is "integrated and unequal."

The current massive commitment to school integration by the national office of the NAACP, the Legal Defense Fund, and virtually every other legal agency with sufficient legal and financial resources to effectively represent the educational interests of black and other minority-group students, is questionable on grounds of: (1) historical precedent; (2) parental priorities; (3) educational expertise; and (4) legal strategies.

Before reviewing each of these areas in detail, it is appropriate -- even necessary -- to respond to the traditional charge by civil rights groups that any divergence from or criticism of their school policy of unconditional integration must be considered antithetical to the interests of black people, and ammunition for racists who wish to overturn the Brown decision and re-establish compulsory, segregated schools.

I recognize with Professor Charles Hamilton, who stated, ". . . Black people who once worked for desegregated schools but who no longer do so are viewed as having given up the fight, as having joined the white racists, and, indeed, as having become black racists and advocates of 'Black Power separatism'."[3] With Charles Hamilton, I would respond that the seeming similarity of the suggestions contained in

this paper to the views of some white segregationists whose ultimate goal is to deny educational opportunity to black people is an appearance that is unavoidable. I hope to show though that there is a world of difference between "separate but equal" schools established over the objection of blacks and maintained to insure the inferior character of the education they provided, and institutions designed for and responsive to the very special educational needs of black children who either by reason of parental choice or legal barriers, are unable to attend desegregated schools.

I. Historical Precedent

For at least 175 years before the Supreme Court's opinion in Brown, black parents sought good schools for their children in the face of continuing white opposition. Because of their minority status and their lack of power, blacks have utilized both separate and integrated schools in seeking this goal. For example, the current school crisis over desegregation of Boston's public schools did not begin in the mid-1960s with the passage of the state's "Racial Imbalance Act," but in 1787, when Prince Hall petitioned the legislature to grant blacks their own educational facilities because they "now receive no benefit from the free schools."[4]

The Boston request was repeated throughout New England where most local school committees assigned black children to separate institutions, when they did not exclude them from public schools altogether.[5] Those schools established for blacks were generally so under-funded and inadequate, that black parents in increasing numbers sought admission to white schools. These efforts were generally unsuccessful, except in areas where the exclusion of blacks from the white schools would deprive them of a public education altogether. In some cases of this character, blacks were ordered admitted to white schools. Where black schools existed, however, the great weight of authority followed the result in the famous Roberts v. City of Boston case,[6] in which the state court upheld the school committee's decision to operate separate schools for blacks. In only a few instances did courts grant requests of black parents to admit their children to white schools.[7] These decisions were prefaced on the absence of state laws requiring separate schools for black children. They usually involved only a few black children residing in a predominantly white school system. Even these decisions were wiped out by the Supreme Court's "separate but equal" doctrine in Plessy v. Ferguson.[8]

For a half century, blacks and their legal representatives sought without much success to give meaning to the "equal" part

of the Plessy standard. This experience led to the conclusion that black children, with limited exceptions, would not receive an education equal to that provided whites unless they attended the same schools. This conclusion, followed by Herculean efforts and propitious political circumstances, resulted in the Brown decision. The removal of legal protection of racial discrimination spurred blacks to efforts that have resulted in major educational gains.

But despite the progress, the twentieth anniversary of Brown finds a substantial percentage of black children still attending predominantly black schools and a large, if unascertainable, number of black children whose enrollment in integrated schools is not proving of educational benefit. More progress can and should be made in desegregating public school systems in the North and South. But the continuing migration of whites from the cities to the suburbs while blacks immigrate from the country to the city indicates that the number of predominantly black urban school systems will continue to grow. Federal courts, in the face of rising public and political opposition, have continued to give very strong support to minority litigants in school cases. But there is growing concern that the outer limits of judicial authority to order school desegregation involving long-distance transportation have been reached.

Justice Powell has already expressed the view that long-distance busing is not required by the Constitution and serves to disrupt public education by ignoring the practical and educational benefits achieved when children attend community schools near home. In terms that seem to foreshadow a closer review of desegregation plans involving busing, Justice Powell wrote in the recent Denver school case: "In the commendable national concern for alleviating public school desegregation, courts may have overlooked the fact that the rights and interests of children affected by desegregation programs also are entitled to consideration."[9]

A further indication that the courts are taking a harder look at urban desegregation plans involving major transportation components are three decisions from Tennessee cities, each of which obtained judicial approval of plans that left substantial percentages of black children in heavily black schools. The Supreme Court has refused to review any of the three cases.[10] It is fair to add that the Court during the current term has also refused to review lower court decisions that supported school desegregation plans involving busing and other school desegregation measures.[11]

Civil rights groups are placing their hope for continued school desegregation progress in the urban areas on a series of "metropolitan" cases now pending in Detroit, Atlanta, Boston and Indianapolis. The plaintiffs in these cases seek court

orders requiring urban and suburban school districts to merge to facilitate desegregation on a metropolitan basis. The first of these efforts failed when an equally divided Supreme Court affirmed a lower court order that Richmond, Virginia was not required to consolidate its school system with that of two neighboring counties, despite an impressive district court opinion that reached a contrary decision.[12]

As this is written, civil rights advocates are anxiously awaiting an expected decision by the Supreme Court in the Detroit school case, where lower courts have approved orders that would require 53 school districts to join in Detroit's school desegregation plan.[13] In view of the closer scrutiny the Supreme Court has been giving desegregation plans involving long distance busing, and considering that Justice Powell, a critic of such plans, did not participate in the 4-to-4 Richmond school vote, the chances for a ruling favoring metropolitan desegregation in Detroit are not good. And even if the Court does affirm the lower court orders, each of the 53 suburban school districts is expected to oppose any plan that is filed. Such opposition guarantees that the Detroit school litigation, already four years old, will get much older before any meaningful desegregation takes place.

But the growth of black political power in Detroit indicates that the community control many of Detroit's black

leaders have sought since the mid-1960s, may become a reality.[14] Thus, by maintaining flexibility in the means by which black children's educations are improved, Detroit may gain its primary goal no matter how the Supreme Court resolves the metropolitan suit.

II. Parental Priorities

In view of the serious obstacles to further school desegregation, particularly in large urban areas, what is the source of the mandate under which civil rights groups have continued to push for school integration? Obviously, no public opinion poll of black parental interests is feasible, and I would not argue that civil rights leaders are obligated to base their policies on the responses of this or that percentage of the black population on any given issue. Moreover, there is no doubt that a large percentage of blacks, particularly those in smaller urban or rural communities, favor school desegregation as the best hope for obtaining quality schools for their children.

And for good reason. Two decades of desegregation progress have not ended the society's prediliction to favor schools where whites attend. The advantages of inter-action for both black and white children are great. And even with

its implicit racial insult, and the educational short-changing that black children often receive in integrated settings, the concept of integrated schools is attractive and in keeping with the nation's ideals.

But ideals will not alter the fact that black children need quality schools now, and a growing percentage of their number reside in urban school districts where the chances for meaningful desegregation before the Brown decision doubles its age are increasingly bleak. These realities justify at least serious consideration of alternative means of securing Brown's promise of "equal educational opportunity." In fact this has not happened, and those outside the "inner circle" of civil rights leaders have been severely attacked for even voicing the suggestion.

I suggest that the failure to examine policies designed to obtain the best possible schooling, whether integrated or separate, does not conform with the priorities of black parents.

Recently, Congressman Andrew Young, a highly respected civil rights leader, reported that his young child had been assigned to a desegregated school with ill-trained teachers and a high percentage of lower-class white children. There was a predominantly black school located closer to Young's

home, attended by a large percentage of middle-class black children. The school had black leadership and was involved in a number of impressive educational programs. Young confessed that the situation posed a serious dilemma for him, but that "when I found that my belief in integration was posing a harm to the educational future of my child, I decided that my child's education was more important than my devotion to integration." Young's decision to withdraw his child from the integrated school and place her in the predominantly black school closer to his home is a decision, I suggest, that, placed in a similar situation, the vast majority of black parents would follow.

The fact is that following the Brown decision, virtually all blacks saw a desegregated education as the best hope for their children. But the long-delayed implementation of the decision, the continuing hostility of the society to its implementation, and the less-than-impressive achievement statistics attributed to black students in desegregated settings, all have resulted in a restructuring of the parental priorities to read something like: "I would like an integrated education for my child if such is possible without serious risk to his physical safety and his educational potential."

It is true as civil rights leaders maintain that they have little difficulty finding plaintiffs for school

integration suits, but what they do not add is that parents concerned about their children's education are given no alternatives to integration. This is not misrepresentation on the part of civil rights lawyers and the organizations that they represent. For them, no alternative to integration exists.

III. Educational Expertise

It may never be known how much the social science testimony concerning the adverse effects of segregation on black children contributed to the Court's decision to invalidate the "separate but equal" standard as it applied to public schools. It is certain though that the refusal of civil rights groups to consider alternatives to school desegregation cannot be based on research data proving that desegregation is a clear, educational benefit for black children. Efforts to ascertain this benefit have been made. As one writer found after surveying the literature:

> Social scientists have forwarded a variety of theories to explain why racially balanced schools should aid or retard learning. Each has different implications. Most focus on school resources arguing that predominantly white schools are better endowed with some resource or another, and that equal educational opportunity would require giving minority pupils equal access to these superior resources.

> These may include pupil-teacher ratio, experienced teachers and diversified facilities (the conventional measure), or it may include the presence of advantaged children who 'teach their less advantaged peers' (the 'peer group learning' theory), or higher expectations and better morale among teachers in white schools.[15]

But available social science research fails even to show a relationship between conventional resources and achievement, and efforts to ascertain either a positive or negative influence of desegregation have led to inconsistent conclusions, or none at all. Thus, Ron Edmonds is justified in summarizing the research literature since 1954 as follows: "Under court-ordered integration, some black pupils do better, some Black pupils do about the same, and some Black pupils do worse. Therefore, court-ordered desegregation, in and of itself, is an insufficient and sometimes inappropriate response to the present inequity that characterizes public instruction for Black children."[16]

But it may be argued that social science studies are an inappropriate measure in determining the educational effectiveness of desegregation for black children. Certainly, existing studies have reached wildly varying conclusions. In addition, research studies usually define educational attainment by ability or intelligence. These provide uncertain

measures which vary over time for an individual, and for whole groups of children. It is far from certain that tests measure what schools should do, or that the questions they ask are not so culturally-related as to make them manifestly unfair for all but upper middle-class whites. Moreover, we know that school children do not live in a vacuum, and that test scores are likely influenced by parental achievements, class status, health, as well as school quality. Finally, surveys and studies of integration efforts are difficult to compare because of the absence of adequate comparison of control groups, the different statistical procedures followed by the investigators, and, all too often, the social outlook and pre-formed conclusions of the investigator.

Integration advocates are not discouraged by the inconclusiveness of integration studies. They simply suggest that desegregation requirements not be based on the conflicting findings of social science studies. They add that the Constitution requires desegregation as a remedy for past wrongful segregation, whether or not it has any educational value.

It is true that a large measure of contemporary school desegregation strategy is based on the hope that black kids will get what white kids get, if they go where the whites go. As Dr. Kenneth Clark has concluded: "It is not the presence

of the white child per se that leads to higher achievement for the Negro child who associates with him in class; it is the quality of the education provided because the white child is there that makes the difference. . . ."[17]

These are wise words, and an appropriate basis for school policy decisions in those instances where desegregation is a reasonable possibility, or where no effective alternative to integrated schooling is possible. But the policy-makers in civil rights groups recognize no exceptions. For them, there can be no effective education in a racially-isolated school. Today, as in 1954, integration is the only possibility. The policy may well serve the virtue of consistency far better than it does the immediate educational needs of black children.

After all, there are two points that can be made about the available data on integrated education. The first, frequently made by civil rights groups, is that school integration will not adversely effect the educational achievement potential of white children. The second, often ignored by these spokesmen, is that black schools are not inferior simply because they are black. Rather, most are inferior because they have been seriously crippled by generations of not just enforced segregation, but by what Kenneth Clark has found is the significant correlation between a pattern of deprivation in ghetto schools and a pattern of advantage in white urban and suburban schools.[18]

There are, as black educators from Kenneth Haskins to the Black Muslims have shown, inherent, educational advantages in black schools, particularly for poor, ghetto blacks. To cite but one example, black first-graders from ghetto backgrounds with little prior contact with standard English are no less disadvantaged in schools insisting that they immediately learn to read standard English than are children from Chinese-speaking homes whom the Supreme Court recently found are entitled to bi-lingual or some other special instruction designed to overcome their English language deficiency.[19] Programs from Ravenswood City schools in California to the Urban League's Street Academy program in New York have shown the educational efficacy of modeling schools in accordance with the needs of the students they serve.

Of course, socially-induced educational problems can be overcome in integrated settings, but as Kenneth Haskins has pointed out, integrated schools consume an inordinate amount of energy insuring and reassuring whites that the presence of blacks in <u>their</u> schools will not lower school quality.[20] Thus, programs, curriculum, and personnel are selected with the interests and needs of white rather than black students given priority. Where the interests and needs diverge, and resources are inadequate to serve both, black children will likely suffer.

In black schools, particularly where parents have learned the value of and been given the opportunity to participate in school policy making, full attention can be given to the often specialized interests and educational needs of black children. Special school committee meetings are not required before pictures from Ebony can be posted or black dolls added to the kindergarten toy chest.

The learning potential in such structures is obvious to educators, if not to civil rights leaders with their eyes fixed on integration. But as Dr. Mario Fantini suggests, effective black schools may further, not retard, the integration goal. He suggests:

> Desegregation refers to the physical mixing of black and white students; integration refers to humans connecting as equals. Agreeing on the goal of integration, one could argue that it is necessary for black and other minority groups to have a sense of cohesion and identity. This can in part be achieved through the control of their own institutions. Once blacks attain a status of potency, they will be in a better position to connect up with white society as equals rather than as "junior" members. Therefore, such participatory efforts as decentralization and community control can be viewed as necessary steps toward a further stage of integration.[21]

IV. Legal Strategies

While it is unlikely that legal scholars will ever agree on a statement of what the Brown decision actually held, it is certainly clear that the case does not stand for the proposition that every black child is entitled either to a seat in an integrated classroom, or to attend a desegregated school. This question was removed from the area of legitimate debate by the last paragraph of the 1954 Brown decision, which postponed until the following year the question of relief for the class whose Constitutional rights the Court had found were violated by segregated schools. Any lingering doubt on the subject was removed when, in the second Brown case, the Court rejected NAACP pleas that the schools be ordered to desegregate immediately, and returned the cases to the generally hostile district courts with instructions that desegregation should proceed with "all deliberate speed."[22]

Even when the Court finally set specific guidelines for completion of the school desegregation process sixteen years after its "all deliberate speed" standard, those guidelines, set forth in Swann v. Charlotte-Mecklenberg Board of Education,[23] recognized that segregated housing patterns characterized metropolitan areas, and stated, "In some circumstances certain schools may remain all or

largely of one race. . . ." Such "one-race" schools are to receive the closest scrutiny by the district court to insure that reasonable means are not available by which they may be desegregated. But the Court made clear "that the existence of some small number of one-race, or virtually one-race schools within a district is not in and of itself the mark of a system which still practices segregation by law." In other portions of the Swann opinion, the Court made clear that while bus transportation was a permissable means of overcoming neighborhood segregation, it warned that "An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."[24]

This language and the indication in the recent Tennessee school cases discussed above that the Court intends to adhere to it seem to remove any chance that increasingly large numbers of urban black children will experience a desegregated education. Again, this conclusion seems valid, whatever the Supreme Court decides in the Detroit school case. Construing the remedies available under Brown as limited to integration has thus limited its value to what is likely a minority of black children. Such a limitation is not required by the law.

Indeed, the legal leverage of Brown should be more than adequate to enable black parents to make those changes in black schools that will permit them to operate effectively for black students. Over the strong resistance of some civil rights groups, local blacks in a few areas have begun that process.

In Atlanta, Georgia, a group of black parents and leaders determined last year that the educational interests of black children would best be served by not continuing school litigation that had achieved only a moderate amount of desegregation since its intitiation in 1961. In the meantime, a massive white exodus had left the school system almost 70 percent black in student population, but predominantly white in policy-making positions. After lengthy negotiations, a settlement order was agreed to by the parties and approved by the district court that called for implementation of a desegregation plan less extensive than the plaintiffs were entitled to under the standards set by the Supreme Court in the Swann v. Charlotte-Mecklenberg case. In return, the black community was given authority to fill a number of administrative positions including the school superintendent's job. In their view, compliance with a full integration order would have taken several more years, brought about an all-black school system, and a Pyrrhic integration victory. Their hope is that more blacks in top policy-making

positions might improve the quality of education their children receive, and perhaps even reduce the present headlong flight of whites to the suburbs.

In addition, Atlanta has a large number of well-educated middle-class blacks who, like Andrew Young, live in black neighborhoods; they send their children to predominantly black public schools that they consider as good as any in the city, and far superior to the lower-class white schools with which they fear any sweeping desegregation order would require them to mix. Thus, for many black Atlantans, implementation of the long-delayed promise in Brown threatens to present a further barrier to their efforts to obtain equal educational opportunity.

An appeal by dissident plaintiffs represented by the NAACP got bogged down in procedural issues; this enabled the court of appeals to avoid the substantive issue of whether blacks (or some of them) may opt for some alternative to complete school integration when such plan is deemed an effective means of providing quality schooling for their children.[25] The question is certain to surface in future litigation. In many systems, however, black parents are likely to make the best deal they can in the negotiations process rather than face the delays, expense, and uncertainties involved in further litigation.

It is not certain how courts will react to challenges of "Atlanta-type" school settlement plans. A district judge in the Fort Worth, Texas, case approved continuance of a predominantly black high school and a middle school located in a black neighborhood on a finding that the black parents wanted to maintain a community school in which "the self-concept of the blacks would be enhanced by giving them an opportunity to show their pride in their race and what they could do if given an opportunity." The judge cited no cases or other authority, but stated: "It is beyond my comprehension to presume that the blacks are being denied equal rights with other races when they know what their rights are and they are getting something they requested."[26]

The obvious potential for widespread evasion of Brown through the coerced adoption of such plans, particularly in small communities, could be reduced by approving plans that sanction racially-isolated schools to further special educational programs -- but only for limited periods of time. By requiring frequent review and standards for academic accomplishment during the approved period, courts and parents could gain some assurance that such "transitional plans" would not become the first step in a return to separate and unequal schools.

It would also seem possible to do much more work in developing the old "separate but equal" concept of Plessy v.

Ferguson,[27] a doctrine that was repudiated (but not totally abandoned) in Brown, and which because it was never meaningfully enforced, may take on renewed value as a standard of equality in those areas where the remedy of desegregation has proved infeasible under the Swann standards.

Justice Douglas suggested the need of such a revival in an order denying a stay in a Northern California school case a few years ago.[28] Noting that racial isolation in the schools is often the result of many factors, he suggested that the Plessy doctrine might require a plan under which white as well as black students use an inferior high school. He deemed such a plan "an acceptable alternative to removing the inequalities through an upgrading of the subnormal school."[29]

Requiring a re-structuring of school financing systems is certainly one component in a program designed to equalize schools as to educational efficiency, the only standard that has meaning to most parents. The Supreme Court's refusal to require equalization of school funding formulas in San Antonio Independent School District v. Rodriquez, 93 St. 1278 (1973), reflects more the incomplete research and presentation of this litigation than any inherent defect in this idea. See Serrano v. Priest.[30] But to be beneficial for large urban areas, school funding litigation must not merely provide the court with data showing the adverse effects on educational

efficiency of inadequate funding, but must suggest standards for remedial legislation that do not place the poorest educational systems (which are seldom the most poorly financed systems in the state) in worse financial condition than they are under current funding laws.[31] In addition, litigation that does not encompass the problem of disparate school funding of an intra-district character rewards school officials who traditionally have skrimped on funding of ghetto schools to pay the higher salaries and honor the requests for books and teaching materials coming from more experienced teachers who usually are found in the "better" schools serving predominantly white pupils.

As indicated in the previous section, it is far less certain than it seemed in 1954 that racial isolation causes racially different outcomes, and that racial integration will yield racially identical results. The concern in Brown with the associational consequences of segregation remain, but these concerns have never been crucial to judicial decision-making as the "all deliberate speed" concept and limits on busing show. Thus, it is unlikely that future decisions on the validity of Atlanta-type plans will continue the Brown assumption that appropriate black pupil performance must be preceded by black pupils being mixed with white pupils.

There is an indication of what courts may do in the ill-fated litigation to save the Ocean Hill-Brownsville community school experiment after the New York school board decided to abandon it. Deeming the Ocean Hill plan an educational experiment that the state should be able to try to improve school effectiveness, the court said:

> But the State should not be put into a constitutional straight-jacket, forbidding it from attempting other experiments. The alternative to segregation was some form of integration -- that was the clear alternative. There is no such obvious solution to the education problems of the large cities. The State should not be prevented from ending one experiment and trying others, if the action is taken in good faith, without discriminatory intent or result.[32]

Judicial decisions are far more likely to be based on present circumstances than on past precedent. This is particularly true in the politically-sensitive area of school desegregation, where school integration remedies have cut deeply into the reserve of public confidence and respect required by the courts for effective functioning. Most courts do not want to abandon the goals of Brown, but they need help in fashioning remedies for past racial deprivation that offer real promise without the politically disruptive

and educationally-suspect plans that rely totally on balancing the races in each public school. This help regrettably is not likely to come from the national civil rights groups, the only legal representatives now before the courts with the necessary technical and financial resources.

Thus, it is today impossible to carry out Ron Edmonds' call for a redefinition of "integration so as to make it more culturally democratic and thus more educationally effective. . . ."[33] Edmonds sees such redefinition as ultimately depending on developing effective instruction for majority black schools. I suggest that a great many black parents share Edmonds' view. It will be interesting, although expensive in educational terms, to note how much more time must pass before the national civil rights groups see what should be apparent to all.

FOOTNOTES

*Professor of Law, Harvard University.

1. 347 U.S. 483 (1954).

2. Judge Weick, dissenting in Northcross v. Board of Education, 466 F.2d 890, 898 (6th Cir. 1972).

3. Hamilton, "Race and Education: A Search for Legitimacy," 38 Harv. Ed. Rev. 671 (1968).

4. H. Aptheker, A Documentary History of the Negro People in the United States, 19-20 (Citadel Ed., 1968).

5. L. Litwack, North of Slavery, 113-117, 120-121 (1961).

6. 59 Mass. 198 (1850).

7. Clark v. Board of Directors, 24 Iowa 266 (1868); People ex rel. Workman v. Board of Education of Detroit, 18 Mich. 400 (1969); Board of Education of Ottawa v. Tinnon, 26 Kan. 1 (1881).

8. 163 U.S. 537 (1896).

9. Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189, 247 (1973).

10. Northcross v. Board of Education of Memphis City Schools, 484 F.2d 215 (6th Cir. 1973), cert. denied __ S. Ct. __ (1974); Mapp v. Board of Commissioners of City of Chattanooga 477 F.2d 851 (6th Cir. 1973), cert. denied 94 S. Ct. 445 (1974); Goss v. Knoxville Board of Education, 482 F.2d 1044 (6th Cir. 1973), cert. denied 94 S. Ct. 933 (1974).

11. See e.g., School Board of Danville v. Medley, 482 F.2d 1061 (4th Cir. 1973), cert. denied 94 S. Ct. 933 (1974); Farah v. Unified School District, __ F.2d __ (10th Cir. 1973), cert. denied, 94 S. Ct. 723 (1974); Brooks v. Carden, 473 F.2d 912 (6th Cir. 1973), cert. denied, sub nom., Concerned Parents Association v. Brooks, 94 S. Ct. 55 (1973).

12. Bradley v. School Board of City of Richmond, Va., 462 F.2d 1058 (4th Cir. 1972), aff'd by an equally divided court, 412 U.S. 92 (1973).

The Supreme Court has prevented the formation of new school districts where such action is deemed a subterfuge to evade effectuation of desegregation orders. Wright v. Council of City of Emporia, 407 U.S. 451 (1972); United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).

13. Bradley v. Milliken, 484 F.2d 215 (6th Cir. 1973), cert. granted, 94 S. Ct. 538 (1973).

14. See Grant, "Community Control vs. School Integration -- The Case of Detroit," No. 24, The Public Interest 62 (Summer 1971).

15. Pat Lines, "Race and Learning: A Perspective on the Research," 11 Inequality In Education 26 (March 1972).

16. Edmonds, "Judicial Assumptions on the Value of Integrated Education for Blacks," Proceedings, National Policy Conference on Education for Blacks, 140-144 (1972).

17. Clark, "Fifteen Years of Deliberate Speed," Saturday Review, Dec. 20, 1969, at 59-61.

18. Clark, note 17, supra.

19. Lau v. Nichols, 94 S. Ct. 786 (1974).

20. Haskins, Statement Comparing Integrated and Community Control Schools, Hearings, U.S. Senate Committee on Equal Educational Opportunity, 5873-5874 (July 27, 1971).

21. Fantini, "Participation, Decentralization, Community Control and Quality Education," 71 The Teachers College Record 93, 95 (Columbia University, 1961).

22. Brown v. Board of Education, 349 U.S. 294 (1955).

23. 402 U.S. 1 (1971).

24. Id. at 30-31.

25. Calhoun v. Cook, 487 F.2d 680 (5th Cir. 1973).

26. Flax v. Potts, Civ. Act. No. 4205 (N.D. Tex., Aug. 23, 1973).

27. 163 U.S. 537 (1896).

28. Gomperts v. Chase, 329 F. Supp. 1142 (N.D. Cal.), injunction denied pending appeal, 404 U.S. 1237 (1971).

29. Id. at 1239.

30. 5 Cal. 3d 583, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

31. See, e.g. Goldstein, "Interdistrict Inequalities in School Financing: A Critical Analysis of Serrano v. Priest and Its Progeny," 120 U. Pa. L. Rev. 504 (1972); Dimond, "Serrano: A Victory of Sorts for Ethics, Not Necessarily for Education," 2 Yale Rev. of Law and Social Action 133 (1971)

32. Oliver v. Donovan, 293 F. Supp. 958 (E.D. N.Y. 1968).

33. Edmonds, see supra, note 16.

IV. SCHOOL DESEGREGATION: CONSTITUTIONAL RIGHT OR OBSOLETE STRATEGY?

Derrick Bell

List of Participants:

Derrick Bell -	Harvard Law School
Mary Frances Berry -	Faculty, History Department, University of Maryland, College Park
Jim Dyer -	Carnegie Corporation
Ron Edmonds -	Center for Urban Studies, Harvard University
Elisha D. Gray -	Department of Education, State of Michigan
Barbara Jackson -	School of Education, Atlanta University
Ruby Martin -	U. S. House of Representatives Committee on the District of Columbia
Walter McCann -	Faculty, Programs in Administration, Planning, and Social Policy, Harvard University
Bernice Miller -	Center for Urban Studies, Harvard University
Robert Mitchell -	President, Wilmington Board of Education
Charles Moody -	School of Education, University of Michigan
Betty Nyangoni -	Spectrum, Stockton State College, New Jersey
Margaret Simms -	School of Business Administration, Atlanta University
Kenneth Tollet -	Institute for Study of Educational Policy, Howard University

Ron Edmonds: Let me make just a few remarks by way of introduction and intent. The people in this room represent a multitude of disciplines, work settings, backgrounds, and experiences, and that is quite deliberate. The one thing that is not in the room is unambiguous, straightforward opposition to Derrick's position. That is, obviously, I do not expect that all of us fully subscribe, either in every particular, or in general, to the position that Derrick is putting forward. But our interest was in a critique of Derrick's position, but

within some general acceptance of the legitimacy of the discussion as a proper discussion. Then, beyond that, our further interest in the subject is: What are the implications of the question that Derrick raises? What are the implications of the questions he raises for each of the disciplines or work settings or experiences that you represent? That is to say, we don't have to stay within the confines of the law, we don't have to stay within the confines of academia, and we don't have to stay within the parameters that Derrick set forward. And I am very much interested in the implications of the questions that Derrick raised in the context of the separate kinds of experiences and perspectives that you represent. Finally, and I'm going to repeat this at the end, but it's in some respects the most important part, we're also very much interested that you should, at some point, and if you don't I'll ask you again at the end -- I want to know what is in your judgment the proper work to be done in pursuit of the issues, questions, perspectives, and possibilities that are raised by Derrick's paper and his discussion? Having said that, I think that the group is manageable enough so that I'm not going to be as organized as we might be, unless it turns out, for reasons of pursuing some particular question, there is some value in that.

Derrick: I'd like to start it all up by re-raising the question that Ruby Martin posed early in the discussion. How did you raise it, Ruby?

Ruby Martin: In sort of two different concepts: first one being, how do we begin to legitimize our concerns that there are some viable alternatives to forced integration and that it isn't an all-or-nothing proposition. I'm particularly concerned that we not destroy the people who have been in the forefront of the integration movement, because I think they are needed for some very specific kinds of roles. I think we are in a pluralistic society. That education already reflects. And some of us have the responsibility to accept youngsters where they are and try to deal with them where they are and where they're likely to remain. But we still are illegitimately the black racist, separatist, or some-

thing or other, and there ought to be a way that we can get rid of those notions. The other thing I was concerned about was trying to develop a laundry list of the issues that affect black youngsters, no matter where they are, whether they're in a desegregated school, integrated school, or segregated school, because I think those issues are going to have to be dealt with down the line and some of us have the responsibility to do it.

The other thing I said was that somebody has the responsibility to re-examine the factual situation now as opposed to 1954 up to a certain point when we were in the hot throes of pursuit of school desegregation, because the situation has changed radically. We're dealing with different kinds of youngsters in terms of class, economics, the percentages, and the whole bit.

Barbara Jackson: Can I try out an idea? We've got to find some other ways to legitimize, as Ruby suggests. I think universities are institutions that can do that through research. One of the things that I would push is that we not keep reacting to the Jenckses or the Jensens, et al. I think we just go down a narrow path that started out with Dred Scott's decision.*/ We will never become human beings if we start on the premise that we're property. I think all the labels that were added to us after that first one are all out of that same train of thinking. We've been deprived and disadvantaged and culturally this and that. You continue to try to live up to and make yourself over into that sort of legitimate person. It seems to me that's a terribly fruitless path and maybe was originally, but now to keep going down that way is totally useless for any of us who want to find some new answers. I maintain it started out as "niggers as a piece of property" and "you'll never be a human being," and now we must start on a totally different tack, based on the ideas of anthropologist Charles Valentine. The "culturally different," the "culturally deprived," are not accurate labels of what black folks in slavery days had to deal with. But it was

*Footnote Dred Scott decision

really a dual socialization-culturalization process that was simultaneous. It was not either/or. All of us that grew up, no matter where, grew up both within a black culture of some kind and a white majority culture. There was a difference in degree and maybe quality of how you dealt with those two. But if we think back into all the kinds of experiences we had, the two worlds were really quite separate. The overlap is where the difference came. For some of us, the overlap became so comfortable that we knew which role to play appropriately in each culture. When you go to the fraternity party with all black folks, you act one way and you're very comfortable and you may choose that. If you're going to be in HEW, and you've got to deal with that world of people and what not, you know how to do that. I maintain that a lot of the black kids that were taken into colleges in the late '60's, who had not been acculturated sufficiently in the white majority culture, only knew one response to that, which was hitting out, the confrontation thing. They hadn't learned a variety of strategies that kids growing up in middle-class-oriented, college-oriented black families taught them, like you teach all culture, not explicitly but implicitly. So that when bunches of them came, they really didn't know how to deal with all the kinds of things they were faced with because they hadn't been given enough practice in doing it. We need to take a look at the dual culturalization and the positives that the kids in the ghetto do learn and how they have already learned, but the labels haven't been put on it. Go see Claudine. A whole lot of it is really one of the better done movies in terms of social message. One illustration had to do with the whole thing about math -- that black kids don't know math. So the kid is shooting craps with the garbage man, and he is adding in his head how much he's making and how much the bet is, this, that, and the other; adding, subtracting, and multiplying all at the same time. The garbage man says to him when they get off their knees,"How much do I owe you?" And the kid gives it to him like that. And the garbage man says,"The teacher in school said you didn't

know no math." We have neglected to look at what kids bring out of their black culture that can be used to change the way they're taught. It's not easy, but it seems to me that that starts on a very different premise, that if kids come to school and everybody there says they have a deficit, that they're disadvantaged, then they are, therefore, inferior. And I can't really figure out any way to teach them because they can't talk.

Jim Dyer: I would like to indicate what my particular interest and role is as the representative of the foundation that is responsible for the support of a great deal of the work which I think we now have been forced to respond to, such as Jencks' work. I might add, just parenthetically, that I was not responsible for the position that was taken. That took place before I got there. But I've been trying to deal with the fallout of it since. It's interesting to note the way in which a kind of strategy, although it wasn't a conscious strategy and it didn't flow from or to one particular institution, began with the publication of the U.S. Office of Education Report by James Coleman in 1966. Partly in response to that, there was a seminar held in cooperation with this institution in early '67. And from that grew a number of major research efforts, some of them funded by private sources, some of them by public sources, all having to do with the questions raised by the data that was produced by the Coleman Report and the conclusions of that report. Now it's not my proposal that Carnegie Corporation or anyone else support in perpetuity a black reformulation or re-analysis of that same data. But I think it might be appropriate for the Corporation to be involved in a major way in supporting what I would call the development of a strategy that at least partly impinges on those conclusions that reflect the interests of others who have been well described by Ron. So part of my interest here today is in seeing how the questions that are raised by Derrick may become part of a research strategy which can be supported by the Carnegie Corporation of New York. We currently have a grant to the NAACP to help in the Detroit case.

I was pleased to support that grant and to make that recommendation. I think it's a good grant. But I would like to think that there are other parts of that same strategy which we would also be able to take an informed view of and be able to help.

Betty Nyangoni: I'd like to try to respond to your initial question, Derrick. I'm not sure that all of the civil rights leaders, in fact, would maintain the position that integration is the end. Maybe we should start a dialogue and just see on what grounds we can agree and what kinds of issues we can work for together. I'm not quite sure that we'll come out as separate as perhaps we expressed it this morning.

Charles Moody: I think that Ruby's laundry list is crucial. We have not really paid enough attention to those issues that are vital, regardless of the kind of environment in which the student attending school finds himself. For one thing, we have to look at the whole notion of student rights. That's crucial in whatever kind of situation a student may be in. We have to look at teachers and their attitude toward students, because as I look at union contracts or association contracts, I haven't seen, in any of my experience, any contract that has any clause or anything in there that speaks directly to the benefit of kids. And I say that being well aware of that old notion that if you have happy teachers, well paid teachers or whatever, then that automatically has some correlation with the benefit to kids. I think we ought to follow up on getting a dialogue between the civil rights leaders and spokesmen and attorneys to see what areas we all agree on, to avoid being lost in the negotiations. In other words, what is it that we all want to move forward on for black students? We do have some common goals and some common tasks that are crucial to us. I think it is critical that we approach it from that point of view, rather than where we're different. Let's look at where we're alike.

Ruby Martin: Let me say for the record that Jack Greenberg and those people have

not razzed me out of the civil rights community. I still consider myself a civil rights person. It's just that I have arrived at the position where I think there are three or four different ways to deal with the same problem. They have a role, and I have a role. If dialogue will identify those roles and help us work it out, I'm all for that. At this point, I think that those of us who are concerned about some other issues don't have our stuff together, as the boys say. We need to figure out what it is and where we want to go and how we plan to get there. Right now, they have all the chips, they have the precedent, they have the cases, you know, and they have one step laid out after the other. If you lose in Atlanta, the next step is a metro suit, and I suppose the next step is a state-wide suit. I mean, I don't know. But those of us -- me in particular -- who deal with a school district that is ninety-seven per cent black, that is likely to be that way for the next twenty years -- we're grappling with the issues. I can't begin to deal with them because I haven't identified them all. And I think Chuck is right. Some of our issues are also non-negotiable, and they're not for trade-off purposes. They're real. That's the kind of posture we are going to have to assume in order to get on with it.

Ron Edmonds: I would like to press some of you to answer those questions, right here, now. I don't think it takes much for us to agree that we ought to look for points of agreement and we ought to see where the openings for dialogue exist. But I don't want to leave that as just an abstract inquiry.

Derrick Bell: I had some material in the footnotes that qualifies as it should be qualified. I guess Betty was qualifying it, that not all civil rights leaders believe in integration and that's absolutely true. The Atlanta situation is certainly illustrative of that and our own experience is illustrative of that. I think the Detroit suit really grew out of a lengthy five, six year effort to get community control of the school, and a lot of political shenanigans befell that effort, and somebody in the midst filed this overall school desegregation

suit which initially was a school desegregation suit within Detroit. The rumor has it that some of the opposition, the school board, suggested bringing in these suburban communities. Then the plaintiff said, "Yeah, yeah, that's a good idea." When you have to take your strategy directions from the other side, it's not very good. But it's true that there are any number of leaders, particularly closer to the grass roots section, who are not all or nothing on integration. It is also fair to say that the people who really control most of the money, the NAACP and the Legal Defense Fund, were in most of the suits. And some of the spinoffs, like the Law and Education Center, are pretty well committed to the integration ideal. Not only that, but they don't want to hear anything else, and I am not sure, based on my experience (and I hope someone will be able to tell me I'm wrong), that sitting down with them is going to be very productive, in terms of reason. Now, if you have some political clout, that might be different. "Sit down with us and let us reason together." The Clarence Mitchells of the world are not going to change.

Barbara Jackson: Would it be any different if you went to them with something specific like the Atlanta pact? Here's a black superintendent and a majority black board. The roles are so new and so different that we need to look and see what they're doing and how these other fifty-odd majority black population city school systems are going to do. In other words, don't refute what they've been doing, don't try to argue on that basis, but start out on a whole other tack, like I would like to do with the whole culture deficit model. Not try to react back to the Jencks thing, not try to say, don't talk about integration. We've got some whole new different situations. Here are some ideas on how to deal with the majority black school system, the majority black board. What do you do?

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*Footnote Atlanta pact

When I was at Houston's International School Boards' convention, some single black board members talked to the rest of the black board members. What do you do when you're the only black board member in a white system with everybody else? Among other things, they said, "Make a coalition with the weakest white person on the board so they goof up themselves." In other words, don't try to team up. It was that kind of a dialogue that the black school board members were having with each other, sharing some strategies. Maybe they, being the civil rights leaders, are not as cognizant of the changes that have gone on. There were at least two or three hundred black school board members at that school board convention. That black caucus managed to get a staff person, paid by the National School Boards, to help them do their work. Now that's some real political clout. That's a whole different scene than in '54 when we probably didn't have any school board members elected, right?

Ron Edmonds: I want to put this conversation in a context before it goes much farther, because we're using phrases like "we" and "they" and "integration" as though that were the substantive alternative to something that isn't in the room. I don't think that's what's going on. My perception of the perspective of this group is that most people here, when they make reference to integration, are talking about its efficacy as an instrument of social equity. That ought to be kept separate from the question of whether or not any or all black people are entitled to access to integrated circumstances. This exchange is not intended to suggest a separatist position. It is not intended to recommend; it is surely not intended to coerce or cajole or otherwise espouse a separatist position. For our purposes here, the context in which words like "integration" and "majority black" are used, is a context which reflects the most efficacious posture to have when the purpose is improving the delivery of the public and social services. I think that's the context now.

Robert Mitchell: Ron indicated this morning that I'm sort of a minority here

as a board member.

Ron Edmonds: You're the minority because you're the establishment.

Robert Mitchell: Right. I notice you cleared that up for the tape. Let me just give you a little bit of information. I'm at a particular point as a board member and as an individual. My school district is in Wilmington, Delaware, whose population is 45 percent black. My school district is 82 percent black. We are in the midst of a desegregation suit. The case has been argued and it is before the U.S. District Court now. We are expecting a decision momentarily. This is a metro suit. ACLU and the NAACP put together a number of plaintiffs for a suit against the state. My board chose two years ago to support that suit and to join that suit. In that suit, I believe the plaintiffs have $1,000. When my school district moved into it, my school district added $10,000 publicly to that suit, and we have paid $50,000 so far. We have taken a position and hired attorneys and fought a very strenuous suit, and I think we will probably win. I was not for my board joining the suit. I am not for a total desegregation school district. I realize that in our district we have some very particular problems because of social economics as well as racially. But I came here to give my position and also to see what I can learn that could help me in dealing with this as we come down to the wire. Our school district will more than likely be asked to submit a plan if we are victorious in the suit, and at this point, on this level, we will probably be victorious. Four months ago, I assumed the position of president of the board. As I indicated this morning, two years ago the president of the board, who was black and former president of the NAACP of Wilmington for four years, and our superintendent, Dr. O. Jackson, were both very strong advocates of a desegregation school district. At that time I raised issue with them, and I argued very strenuously with both of them and the rest of the board. I also indicated to my board, which had three minorities (they were minorities there, three white people on our board), that my children were

going to a predominantly white school district with the white power structure, and they were getting what I considered an adequate academic education, but that I would not be fighting for desegregation. I would support that school district as it was, and if I felt that they should have other kinds of social input, I would foster that through our own family social life. But what kind of things can we do? I'd just like to indicate something that I've been working toward in the four months that I've been president, and I could use some reaction to it and maybe some direction.

I have taken the position of developing what I call an affirmative action plan with the city government, the teachers' union, and the business sector. I've also taken the position that my main role as a board member is not for the direct education of the children, but to respond to the adults of my community, the parents of the children, as well as the business sector, because they are the ones who, in effect, either elect or appoint a school board to hire some chief school educators to implement an educational program that would benefit the students and thus benefit the community. And I've taken the position with which you may disagree. I felt that by the school system responding directly to the needs of the community, and when I say community I mean the children, they've overlooked the parents in many cases, and they have dealt the parents out except in those programs with the federal government, such as in Title I and other federal programs, which have indicated a certain majority of parents be in the decision making bodies. I felt that in doing so, particularly, a lot of the . . . as was indicated this morning, the middle class blacks have been left out of giving direction to the educational system in the urban areas. I also feel that in a minority school district, such as Wilmington, that the educators look toward where the children have come from -- poor families, poor educational backgrounds -- and they tried to develop an educational program for those types of directions rather than, as I feel, in a lot of our white suburban districts, they look where

the child has to go. They look at what the community needs and what they expect those children to deal with when they have finished their educational experience and tried to develop an educational experience that would best support that kind of direction. As I said earlier, I've been pursuing an affirmative action plan, which has gotten me into a lot of trouble in my own black community. The civil rights activists feel that it is unnecessary because we should be fighting for pure integration, which would mean that our school districts in Newcastle County would become 20 percent black and 80 percent white. The community school controllers think that I'm selling out the black community. So I'm in the middle, and the battle's just beginning. I feel that in order for the schools to succeed, we need to identify more closely with the political structure and with the business areas. And I've gone to them and set up meetings between us, and I've said, "I don't want any money. What I want is a guarantee of jobs for the students who are graduating from my schools." Wilmington, Delaware, is surrounded by white suburban areas and the industry in our area, the business areas, are hiring people from the suburban districts and are basically ignoring the young people who are graduating from the Wilmington schools. And I've said, "You've become irresponsive to the city and the city has lost confidence," and thus they have lost an interest in their own students when in fact, they've identified that their students are not going to college. As long as a child is going to college, the parents are right there behind them and know what they're doing, and know what they're trying to accomplish. But once they identify that a child is not going to college, they're not sure where he's going to go. They're not sure what kind of job he's going to get. And in many cases, they lose the kind of interest and the kind of fostering support that the child still needs. So I've asked that they identify jobs that they hire high school graduates for, that they give us the requirements for those jobs, and that we in the Wilmington school system will try to develop programs in our schools to gear our students

toward meeting these job needs.

Ruby Martin: That's disgraceful!

Robert Mitchell: When I say this, I am trying to establish some kind of relationship which is not in our district and our city now. I'm trying to identify job areas, meaningful job areas, so that people can move into these industries and move up into these companies. And in so doing, I feel that we can develop some confidence in the parents as to where their children can go and how they can achieve if they are not going to college and can also instill into the students, areas that they can get jobs in. For instance, in our district -- a big business area -- for some reason or other, we put out only about five students a year who can qualify as secretaries. To me that doesn't make sense, with all the secretarial jobs that are offered in our district. And for some reason, our schools are not meeting the kinds of needs that are there. But I'm trying to develop an affirmative action program that can meet some of these needs. I don't mind your disagreeing, but I do need some feedback, and I do need some reaction to it.

Chuck Moody: I don't think your affirmative action program has to be an either/or kind of thing. I think one of the pitfalls that this may lead to is that you want to really court the business. I hear you coming from two places, one as an educator, but more so as a politician. You want to get some kind of a relationship with the business and political arena which may be good and is good, but you're saying that in order to do that, you'd have to not look at the needs of, or the input of the students. Those ought to be in some way married. You have to get the input of the students as well as try to work with whatever the other segment of the community is. But the biggest thing that disturbs me is that what industries may say the job market is, or available now, will probably be outdated and obsolete by the time those students you are training get out. One ought to train students to have other kinds of skills that will allow them

to adapt and function at something different. But to say that right now in Wilmington, Delaware, there are these kinds of jobs, and fifteen years from now they may not be in existence . . . . Also, I don't know if you meant it this way, but it came through to me that you were trying to set up the Wilmington schools as a terminal kind of education.

Mitchell: No, no, no.

Chuck Moody: It came to me as if the only kind of horizon that students coming through the Wilmington schools would be --

Ruby Martin: Since I said "disgraceful" in the middle of the presentation, I feel a responsibility to follow it up. The first thing I'd like to ask is, what is your bargaining posture for going to the business community? You say, "I want this," and you will get what? Those guys don't deal on the basis of "I want" unless you're ready to give up something. But the reason I said it's disgraceful is because you seem to be assuming that everybody coming through the Wilmington school system is going to be there forever. And schools should, it seems to me, not train people, but educate them so that they can develop their own choices. And you can just say that these are the kinds of options that are out there. If you want to go, if you want to be president of X corporation, you have to have these kinds of skills. We're in a very mobile society. People move all the time. That's an option we have as citizens of this country. The idea of training someone for any job anywhere is repulsive to me because I think that's what has happened traditionally. In very subtle ways, young black girls in the South were trained to take care of white babies and to take care of the homes of white people. And as far as I'm concerned, this is just another cut above that.

Ron Edmonds: I want to try to put your concern in the context of a question that, in my judgment, would combine the broad issue of the discussion, and your particular and proper expression of the practical needs of somebody who's in

a decision making position in a school district. In the context of desegregation, what are the circumstances under which a school district in the United States that is, and is likely to remain, majority black, can offer pupils, as a consequence of their participation in the school district, those sets of choices that give them a lot of things? I'll give you examples. One; give them the choice of continuing to participate in educational activities, both on a secondary and post-secondary level. Two, give them choices about vocation, avocation, occupation, profession, and all the rest. Three, give them choices in terms of their representing resources that are useful to the community of which they are a part, or are useful to a community of which they might become a part. I could go on, but I suspect that that's enough. You see, Bob has described a particular response. I want to make the question general. What, in your collective judgments, are the circumstances under which answering the question of who controls the schools may be partly an answer to whether or not students accumulate choices that are most useful to them?

Ruby Martin: Another part of the answer is that they know how to read, how to write, and how to enumerate.

Ron Edmonds: Can I set that down? I want to put that on the list right there. That lady just answered the question in the following way: one of the characteristics of school districts that successfully serve students is that they learn to read, to write, and to count.

Robert Mitchell: Let me respond. I feel fairly secure in my position, and I feel that I'm doin fwhat I should be doing in Wilmington. But I could use some direction; I could use some education.

Bea Miller: Is continuing education part of your program? If you have specific jobs, do you allow people to come in and out of school at will without onus put on them to make the return? Are you working on money being provided for these kinds of returns?

Robert Mitchell: Right. In fact, we're even trying to get beyond. The state says that after 21 years of age, the public education system does not owe a citizen anything, and therefore, anything you could give him after that in the regular day school, he has to pay for himself. We have just thrown that back in the state's face, and we have graduated students in the last couple of years who were twenty-two and twenty-three years of age. And the state said, "Well, they owe $1400 and something," and we said, "You sue us for it, because he's getting his degree." And they can come back. I indicated that I put my onus on the parent in the community rather than the child. I guess my position is that the parent will look after the child, and the parent has a concern for his child. And if I can support the parents' concerns and the parents' needs, then I'm supporting the child. That's just where I am there. I'm not ignoring the child, and I hope that my schools aren't ignoring the child. But I'm saying, as a board member, that I'm concerned about the parents and their concerns and their needs and their ambitions for their children. And I'm not in any way ignoring the child. When I say training, and that may not be a very good word to use, I'm not really trying to use the word training, I'm really talking about the number of unemployed people in Wilmington, that we do, in fact, deliver the kind of education and the kind of experience that they can have a choice of either going to college, or in fact, get jobs in the community that they live in. The kinds of jobs that are available, I would say, are available in communities pretty well throughout the east coast.

Ruby Martin: What are the new curricula introduced as a result of your agreement? And I'll come right out, what price did you pay for it?

Robert Mitchell: I haven't paid any price because I haven't implemented anything yet. As I said, I've just become president four months ago. I have not implemented any curricula. That will be pretty much up to the educators to develop curricula. I'm not going to really deal with training because I'm not trying

to train anybody. But I am concerned that we get our share of the jobs in my area, which we are not getting now. I'm interested in trying to fulfill some of my community's needs to get some jobs that they have not, in the recent past, gotten.

Chuck Moody: So what you're really doing is saying to industry, these are the students we have available, and do you have some jobs to match them?

Robert Mitchell: No, I'm not saying that.

Ron Edmonds: I would like to put another question. Is the fact that a small portion of graduates of the Wilmington schools are not taking jobs a function of what happens to them in school, or is it a function of the attitudes and behaviors of the people who hire people in Wilmington? If it turns out to be a function of the attitudes of the employers, then modifying the schools won't make any difference.

Robert Mitchell: I think it's both right now.

Walter McCann: What is it they want? Has anybody told you? Have any companies responded and said, "We have this kind of job, and we need this kind of training"?

Robert Mitchell: Right now we're setting up dialogue, and I want to know what kinds of jobs are open. They're hiring anybody with just a high school experience, you know; anybody. State troopers, county police, city police, I'm interested. We have one black country policeman. I recruited him five years ago, and there hasn't been another since.

Ruby Martin: That's politics, not training. That's how much clout you have, and how much pressure you can put on. Based on the kinds of things we have in our country --

Robert Mitchell: Well then, we need some clout, some political clout. All I want to do is see that some jobs come forth. There are a lot of jobs that we should be getting that have a lot of input and a lot of pressure in the community that we just aren't getting.

Margaret Simms: I want to get back to Walter's question, which I don't think you really dealt with. And that is, of the jobs that are available, what do they say they want that apparently your students aren't getting? Are you going to try to identify what those things allegedly are?

Robert Mitchell: Not only identify, I'm going to be concerned about what kind of testing processes they're using, what kind of qualifications. If we can get an agreement, then I want to be able to have our people who are well versed in this area, examine and re-examine the qualifications, the testing processes, and things like that, and bring it down front.

Walter McCann: The transcript up to this point will not show that I am the only non-black sitting around the table. Although I see Bob Pressman over there. So I don't think I should be commenting on what strategies ought to be. That seems to me to be somebody else's concern. It's your concern. They are, after all, to some extent political strategies. But I am trained as a lawyer, and I do work with the Graduate School of Education, so I think I have some things, at least some questions, that are relevant from a more technical point of view once you move in that direction. And the reason I was intrigued by the strategy you've chosen is that it is partly technical and partly not technical. I wouldn't be surprised if you and Ruby were having an argument that you didn't need to have. That is to say, once these people specify what it is that they want, I would be surprised if it goes very far beyond reading, writing, and enumerating. I would be astonished if they could really specify anything more than that kind of very minimal skills and finishing high school. So I think that it would be very important if they would establish standards like that and say what they need. It's obviously important from a legal point of view, as well as an educational point of view. It seems to me that this kind of thing leads into the whole Griggs*/ area. If you can get people to say what it is they think they

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*Footnote Griggs

have to have in order to hire somebody to produce on the job, then it seems to me you've laid the ground for at least two things. One is, if they do hire, then you've got some basis for examining their productivity on the job and promotional practices. Second, if they don't hire, you've got grounds for saying, "Well look, our students are meeting those criteria and the only possibility, therefore, is that there are racial reasons." Then it seems to me that you're into an area where lawyers and educators can help you in a very technical way. So having chosen that strategy, it seems to me that there really are some real avenues open to you. I can't tell you if that's a better strategy than an integration strategy. I don't know the answer to that question. This strategy, on its face, is not wrong. The question of whether it's better than another strategy is a different question.

Mary Berry: I'm reminded in this discussion of the debate, the mythical debate, between Washington and DuBois about black education and about economic equality and political equality at a time when blacks did not have either. But they kept debating about it and forming movements and doing all kinds of things. I'm also reminded that in the Brown case*/ in conference, when the decision was being argued, all the discussion about this question of inferiority. And none of it was about what equal education was or anything like that. That's what they said in the conference, but when they got to the decree, all of the discussion during the framing of the decree was about what is equal education. And the justices, in fact, said, "Well we don't know what equal education is, but what we can do in order to frame the decree is just simply insist that blacks have access to whatever it is whites have, and whether that is equal education or not, we don't know, because the education people don't seem to be able to tell us." Now, so long as you're talking about constitutional rights and legal questions and you opt for the integrationist position of the civil rights people, whoever

*Footnote Brown

they are, then you don't have to answer the question, "What is equal education?" But if you start doing what Derrick is suggesting, and what, I guess, we're all talking about, and start talking about education, and our children have to be educated, you first recognize that you're talking about something different from what the civil rights lawyers are talking about, so you really don't have any argument with them. That's different. It's not the same thing. Second, this is not really a legal question. It is a question of what is equal educational opportunity. What is of educational benefit? What is quality education? I did some research when I was in law school on the question of financing public education and how you got equality of financing. That was before the Rodriguez case. I could figure out how to fashion a remedy, a decree so that a judge could order that there be equality, but every time I got ready to write down what was going to make it equal so that he could announce that, I couldn't figure out what it was. And I read all the educational literature, and I kept writing down these things, and I never did get what was going to make education equal. So we want to say then that civil rights lawyers can do their thing and we don't need to contend with them. We will concede that it's a different issue. But what we need is some kind of a think tank, some kind of money to fund some approaches to developing an answer to the question of what is equal educational opportunity, what is of educational benefit, which I don't think white people even know. Before Brown, you didn't need to know, and they didn't need to know either. You just did whatever you did, and everybody went and had access to it since Brown. But if we're going to deal this way, then maybe we'll have to answer those questions. We should say we're setting ourselves up to try to answer those questions. That seems to me something that keeps us from fighting.

Jim Dyer: You mentioned a point that I want to correct. They are addressing those questions. I have in my files several proposals that Carnegie Corporation, among others, is acting on. They are neither racist nor bad research. They deal

specifically with the same sets of questions you are raising. Five years from now, or even two years from now, we might come to address some of these same questions and find ourselves even further behind with respect to a knowledge of what quality education is all about, what it really takes in a classroom, because the questions being pursued are being pursued outside the framework of discussions like this.

Mary Berry: Let me ask just one quick thing in response to that. Once one answers the question by researching it and doing whatever one has to do to define educational quality or what black parents see as priorities, then you have the legal question of how you order somebody to do that. And then you can talk about all the pre-Plessy*/ stuff and come to the position that even the civil rights lawyers might accept that the reason they went to Brown was because they coudn't get what they wanted under Plessy. But I think the issues are separable, and I think it's worth considering.

Ken Tollet: Following Jim's remark, there's a lot to talk about not only concerning what's of educational benefit, but also to the effect that there's no way to benefit blacks and poor, or at least certain groups of them, because of genetic deficiency. That's something that has to be dealt with. The discussion from the legal perspective brings to my mind the problem that confronted the court in the McGinnis-Ogilbie**/ case that I alluded to in the public discussion this morning. The reason the court said that it would not provide additional compensation for so-called disadvantaged or poor districts was because the educators could not define educational need. The problem of the complaint was that poor students, students from deprived districts and so forth, needed more educational input, more educational resources, more special programs, and so forth, than the students in the richer districts. They were not arguing for

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equality of expenditure. They were arguing for more expenditure for the deprived districts. Now what the discussion brings to mind is the limitation of the law. If it is not possible to define educational quality, if it is not possible to say what benefits students, the courts are forced to deal with what's manageable and what's simple. They can say there must be integration. I thought they could say there must be equal expenditure per pupil. That's something the courts can manage. I want to come back to the original question raised after that preliminary comment. From a rhetorical standpoint, we created unnecessary cleavage between what we are characterizing as civil righters and separatists when we start characterizing our position as segregationist or separatist and that we're not for integration. I think it's unwise to ever say we're not for integration. I think what is a better strategy is to talk in terms of the proper definition of integration.

I will never forget when I was arguing for the support of the continuation of Texas Southern Law School, which is a school involved in Sweatt v. Painter(?)*/ (it was one of the remarkable features of the white mind that it considered the University of Texas Law School integrated when it had one or two blacks in a total enrollment of fifteen hundred). And fifteen to twenty percent of the enrollment at Texas Southern white regarded it as a segregated institution. And I said, I just don't accept that definition of integration and segregation. We are not running a segregated institution. Thirty percent of the faculty was white. But we were still a segregated institution, because we were predominantly black. That is a proposition. I don't accept it, and it seems to me that we're almost buying their definition. The rhetoric around this table seems to be that if an institution is predominantly black, it's segregated, and therefore, because some of us are for the preservation of predominantly black insti-

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tutions, we have to be against integration and for segregation. We need not paint ourselves into that corner.

Derrick Bell: Your comment does raise a serious problem. It goes back to Ruby's thing again. How are you able to make a legitimate position in this field even when people like yourself, who are listening, who are sympathetic, don't hear what you say? What hope is there that you're going to say it in a way that those who really want segregation aren't going to hold you up as an example of it, that those who were confused about it aren't going to put you in the category of those who believe in segregation, that those of the Ken Clark ilk aren't going to lambast you? Is it possible, or do you just have to face up to it, to take your stand and take your medicine?

Mary Berry: It is possible. It is possible. It can be done by distinguishing categories, as I said before, by realizing what everybody's talking about, by being very careful to make distinctions. And you can do that as you articulate a position.

Ruby Martin: Okay, could we take five minutes without getting into defining integration versus desegregation, without taking a position on whether it's good or bad, either one or the other? Could we, for five minutes, look at the fifty school districts that are 60 percent black and more, that nobody around this table is responsible for but that in fact do exist, and try to talk about the factors that mitigate against the youngsters' in those school districts getting a quality education without defining what a quality education is? You can start by citing financial resources, or the quality of the teachers, just in terms of what they are paid. You can continue down a list of things, and those are the things that people around this table have got to cull out of all of this confusion. And to consider -- politically, legally, socially, morally -- however we can take them on in trying to redesign higher education. For example, teachers come with biases and prejudices, etc., so we have to backtrack on all of this. That's what

I'm talking about. I agree with you. You don't have to get into a fight with the Legal Defense Fund because New Orleans is there, 86 percent black, with the lowest reading skills in the South for their graduates and their students. That is a fact of life. Somebody ought to deal with it. I'm suggesting that there's a need to do it. The division of resources ought to be that somebody looks at it and tries to deal with what the issues are that are impacting that school district, those vast numbers of school districts, in a very negative way.

Ken Tollet: But the Legal Defense Fund is behind Adams v. Richardson*/ and has all kinds of implications for the preservation of predominantly black public higher educational institutions.

Ruby Martin: You've got to be kidding!

Ken Tollet: Aren't they?

Ruby Martin: As I read Adams v. Richardson --

Ken Tollet: The order has been modified some as a result of the Nafeo (?)**/ brief, but there's still a threat and there's still the question --

Mary Berry: I don't read that case that way at all.

Ruby Martin: If you're saying that's a threat, that all black colleges are going to stay in the . . . I say that's a very good threat.

Ken Tollet: Well certainly the black presidents perceive it as a threat.

Derrick Bell: I think they're wrong.

Ken Tollet: The main point . . . what is the answer to your question, Derrick? You say, "School Desegregation: Constitutional Right or Obsolete Strategy?" Isn't the thrust of your paper that school desegregation may be an obsolete strategy? And if that's so, then doesn't that mean that you're questioning the legitimacy of continuing to insist on desegregation, let's say desegregation rather than integration?

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Derrick Bell: As the sole means for implementing Brown, I think it's obsolete.

Ron Edmonds: That's what I said, Ken. I go to the same argument exactly, and my response is the same as Derrick's. Yes, desegregation is an obsolete strategy so long as it is the means. When it becomes a means, or one of many means, it then justifies the struggle that we went through to get it and it justifies any struggle necessary to keep it. The difficulty with it is that it is the means and it is the sole means.

Ken Tollet: It seems to me the discussion translated desegregation into integration. Derrick, you remember very well that the early litigation was a fight over whether Brown required desegregation or whether it required integration. That was the dichotomy. And if all desegregation is, is that there will be no more forced separation, and integration means that there's an affirmative duty to bring blacks and whites together, let's say so. I can't discuss questions without defining terms. I'm sorry. Talk becomes unintelligible to me if we are not able to say what we mean by integration, or what we mean by desegregation or separatism. We are in an Alice in Wonderland dialogue if we can't do that. And it seemed to me the answer to my question earlier suggests that either you're saying that we should not continue to desegregate, or we should not put so much emphasis on integration. Then there's the question of what do we mean by desegregation? What do we mean by integration?

Ruby Martin: Is Washington, D. C., segregated, desegregated, separatist?

Ken Tollet: I would suppose that the Detroit litigation, if it succeeds, would suggest that it's segregated. The principle of what I was talking about is the idea that integration requires the bringing together of blacks and whites. And that if you have to go across district lines, maybe even state lines, if that line of decision continued, you'd say that's what must be done in order to bring blacks and whites together.

Ruby Martin: I think the point in Derrick's paper, which I very much agree with,

is whether trying to achieve that objective is going to push the courts and the public and the politicians to the bring of whatever they have to deal with back home, and we're going to get a kind of reversal of the entire process that's going to snowball. School desegregation is going to come to a stop, and all of the other kinds of things that black people are trying to get -- development banks and the whole kind of redeveloping the cities -- may be very much affected. And that's what's critical to me. It seems to me that there ought to be a realistic appraisal of how much more this country is going to take.

Walter McCann: I have a question for Derrick. I am in some sense surprised when I hear people continue to say that they don't know what quality education is. I think you get very wide agreement among blacks and whites and others about what basic quality education is. That is to say, there are certain minima that have to do with reading, writing, and ciphering, and until the public school systems develop those things and supply them, there's very wide agreement as to what the basic minimal obligation of public schools ought to be. So I'd start there. And I'd stop pretending, as educators and lawyers, that we don't know what that is. For the moment, I'd take the national norms, and if the schools say that that's what they're going to use, and if they don't live up to it, it's their problem. That's the way I'd start. That's not just for black children; that's for white children. I venture to say that if you look at the test scores from the schools in South Boston, you'll find those children don't do substantially differently, in large proportion, than do the kids in the South End of Boston, which happens to be black and Puerto Rican. South Boston happens to be of Irish origin, except they've been here for a little longer than lots of places. Let me come to the question that I have for Derrick. Ruby, I think, stated it as an affirmative statement. Is it not the case that there are at least two different, quite different kinds of situations, and that both the legal and educational strategies have to differ with respect to those? One is the situation where you do

already have substantial black political power. Atlanta is the case which people look at, but there are a lot of others. That is to say, you either have or will have, not a majority of black school children, but a majority of black political power in the city in the sense that you have a predominantly black school board. It seems to me that that's one kind of situation. Then the other kind of situation is where you don't have that and you're not likely to have it in the near future. Maybe I misread your paper, Derrick, but I read it as saying that with respect to the former situation, the strategy of integration is not obsolete, it's just irrelevant. There's no need to attain it. You've got power; do something with it! And that raises a whole series of research questions that are unanswered for both black and white children that a center like this could concentrate on. Not what is quality education, but how do you get it? That's the laundry list. You establish that laundry list and then you set yourselves up. I would now talk strategy because I've gone off the question. I would set myself up to go and supply help to those places because that's a process of debunking certain myths that are widely prevalent. With respect to the second, there's a whole different set of questions. I don't know if that's what your paper's really about, or if your paper's really about debunking the strategy in those cases like Boston where you're not going to have a black majority.

Derrick Bell: What it is really aimed at is both. It certainly is saying that the largest of the fifty districts are predominantly black, and the effort to try to integrate those schools is not worthwhile. The other thing is, I'm not opposed to research in coming to the Center here or other places, but there seem to be enough instances around where we've shown individual teachers, individual schools where the poorest black kids and I guess in some instances where the poorest white kids are taught by people who want to teach them. The challenge is how to create structures where even without extraordinary individuals, inner-motivated individuals who are going to go out there and do it, you can get the

educational process functioning for people who for one reason or another are not, in the main, able to bring to bear the kinds of pressures that middle class people are able to bring to bear on the schools, on the school boards, on the taxing situation, and what have you. And now really, really integration, school desegregation as with . . . Brown was a very fine strategy for doing this. And it still in many instances is a very fine strategy for doing it. In some instances it is not. The particular challenge for blacks is to get across whatever the techniques are going to be so this will work in school district after school district and overcome the barrier to an effective education for everyone that the society has set up. Now who's the guy that wrote that book here in Boston? Kozol. Kozol talks about how American schools don't educate anybody to do anything except to salute the flag and say how great America is and things like that. That probably isn't totally accidental, and it certainly has a whole lot of benefits for the folks who are on top. It occurs an awful lot. Our problem is to get at least the black kids out from under the various pressures that lead to that. And it may, in that regard, be similar to the situation with the bar exams, which is a much more limited thing. A man in California who raised a whole lot of Cain, filed suits and everything, kind of indicated confidentially that the reason they had the bar exam was to keep out at least half of the folks who took the exam every time, and maybe to discourage some of them from taking it again. They said the number of blacks and Chicanos who take the exam is really very small; the percentage who were not passing was very large, but the number who were actually taking the bar exam was very small. If you could come up with a way so we could let them in without letting in all the white folks we don't want, it would be fine. So what we in a larger educational sense are talking about, I think, is a means by which we can get some of the poor blacks or a greater percentage of the poor blacks over into an educationally effective medium without threatening the folks, that everybody's going to be educated and therefore their

situation is going to be greatly jeopardized.

Walter McCann: It seems to me a part of the problem, as I listen to this, is that the way the paper is structured now, even the very title of it, automatically gets you into the debate of "are you an integrationist or a separatist?" If the paper were restructured to deal primarily with those places where integration is not a technical possibility, and were to focus on that and begin to set out the laundry list of questions like "how do you define quality?" "How do you define need?" "How do you establish control mechanisms?" "Is there something in Brown that relates to citizen participation?" -- Questions like that, it seems to me, might really serve a function. Granted, it's a more limited function in the sense that it would only concentrate on roughly half the black children, but that's an awful lot of kids, and it seems to me that that's also where the political leverage is. One strategy for a center or think tank, or for black lawyers, would be to concentrate on those areas where power exists.

Barbara Jackson: I would like to go back to Mary's suggestion to separate the two issues, because the legal ones deal with the two things. But we get to a problem when we try to define desegregation, integration, whatever. Like Ruby, I'm concerned about this because when I talked to people in Atlanta schools, they have achieved desegregation; the courts even said so. There's an 80 percent black school system, but a lot of the kids still aren't learning. I don't think just more money is going to do it either. We've got to rephrase why it is that black kids aren't learning in large numbers. There are enough of us that are exceptions that did learn according to whoever's rules there were. If the test of reading is on the forms they have to fill out when they go for a job in that society, let's make sure they learn how to read to pass that test. Now that doesn't mean that they're not going to learn a whole lot of other things, but I think we spend a whole lot of unnecessary energy trying to say the tests are culturally biased. So they are, but we live in a society that has bias to it.

I'd rather teach kids to pass that test than pretend that they don't have to live in that world and be more careful about what it is that the test measures. It measures just a little bit of this right here. I want to make sure they know how to read that book to pass that test. Then let's go on and deal with some other things and separate the legal argument and let the lawyers define both integration and desegregation, and then some others of us can deal with why it is those black kids aren't learning from either black teachers or white teachers. My guess is that we need to define the problem totally differently and forget the whole myth that the kid comes to school empty, deprived of any kind of culture, deprived of any kind of learning. You've heard thousands of five-year-old kids yelling and screaming and talking, and we let other people say our kids were non-verbal. In that kind of context, it doesn't make any sense. If you assume that they can't talk and they can't understand, you teach them that way. My guess is the argument over black English got sidetracked on an emotional thing, so that nobody really looked at the question of whether you can use it to teach children to read standard English. All of us around this table know that black English exists. I can talk it and you can talk it, and I've been through all these white schools. Nobody is spending enough time on what that means for teaching children to read. Standard English, other kinds of English, let's spend more time there instead of worrying about whether it exists or not, when we know that it does.

Chuck Moody: A couple of things. One, I think that if we are going to separate the two issues, and I think that they need to be separated, then the next time, a part of your think tank ought to have those superintendents and educators who are involved in those districts to define, rather than have lawyers and other folks making those definitions. I think lawyers look at it from a certain way, from a legalistic point of view. But yet we said that we'll get around to making some definitions. I would say that we ought to have some input into what those

black superintendents see as a crucial issue; that's one thing. The next thing, since we're separating these things out, is that I don't see anything in your paper about strategy. I see something about policy, but I don't know if policy and strategy are the same. I look at strategy as a means of implementing a policy. Desegregation, if you're looking at it as a strategy, and if you're saying that is the only strategy, then that's where the obsolescence comes in rather than if you're looking from my point of view. If you're looking at it as a policy statement, then that raises another issue about the education of blacks, and that is that we're going to have to learn to deal with those policy changes and policy analyses that are necessary to insure the equality of educational opportunity. I dare say that if you went into most of the fifty school districts that have black school superintendents or have a majority of black students, the same policies that that district was operating under when that school was predominantly white are still the policies that they're operating under now. How can you operate a system for equity, equality of opportunity, or whatever, with a policy that was supportive of an complementary to unequal kinds of opportunity? That's an issue we have to address ourselves to. We have to look at that policy analysis in those districts and then make sure that we have black superintendents and other administrators giving the kind of input as they see it, from a different point of view, and board members as they see it from a different point of view, the ones who have to make the policies, the ones who have to implement the policies, and I guess the lawyers have had enough training to see how they can legally catch you up when you ain't doing the policy.

Elisha Gray: As I read your paper, Derrick, I see school desegregation as the strategy at a time in the past, for bringing together whites and blacks so that blacks could interact and intermingle with the abilities and the advantages that the white kids had at that time, and get those privileges and advantages that the white kids were going to get over a long period of time. But I see today that

you would have us form a strategy to find out how we can integrate the materials and the professors who are teaching the blacks and whites that are going to be our educators tomorrow, a strategy for integrating that material right now, and pursue that so that our school or educational integration would be that of integrating our strategy into the minds of educators who will be teaching, as opposed to just trying to bring the bodies together. Am I being understood at all?

Bea Miller: I'm not sure if I followed that. The first part is certainly so, but I'm not sure I understood what you meant by the latter part, in terms of integrating the educators.

Elisha Gray: I'm saying that the integration of the materials that are being utilized to educate our kids should maybe be changed. And I'm also saying that the minds of the people who are educating our children maybe should be changed, or maybe should be taught to know what integration is all about, and maybe it will not have to be the falling back on the cross-district busing, to get the minds integrated as opposed to just back to school integration, because that's going to bring upon us some good things and it's going to bring about some bad things too, in certain minds.

Derrick Bell: Within some of these systems in black schools where integration of the first phase type is simply not feasible, not only can you hopefully save the kids there to a great extent, but we can also build on that saving process, methods and procedures that will lead eventually to a more meaningful kind of integration, one that is closer to equality, where these are the people who are bringing something that's of value.

Elisha Gray: I see us attacking the causation as opposed to the symptoms. And I think that by bringing the bodies together, it will begin to address the causation of why these things happen over a long period of time. But the second phase, as I see it, should be attacking the causations of materials that have been continually used to desegregate the minds of those who are educating our kids and

those who have educated us. Thanks to our survival skills, we have survived in the middle class or white class society.

Ron Edmonds: Let me answer the question quickly. I've got two answers. In the first instance, when the black children are in a minority in a desegregated school, it seems to me that the effective thing is to convey to parents the instruments for protecting their children. More importantly, the issue in all of this is not instructional strategy, it's not materials, it's not organization; it is the circumstances under which the institution is responsible for teaching, as opposed to children being responsible for learning. One of the ways you do that is, you scrap normative measures of pupil performance in any school district in which there is, in fact, effective black control, and the way you define quality education in that setting is as follows: You go to the community to be served and you engage in whatever processes are necessary in order to get the community to describe what the community defines as pupil mastery of each successive level of schooling. The community's definition of mastery of each successive level of schooling will be a function of the community's judgment of what its children need. And that gets the educators out of the unfortunate bag of playing big daddy, whether they're black or white, and playing the autocratic role of saying, "We know what's best for you." That can be done; that is to say, we have even the technology that permits a community to define pupil mastery of successive levels of schooling, then to develop the instruments that measure it, further to develop the instructional behaviors and the instructional materials that convey it, and on and on it goes.

Mary Berry: Ron, are you aware of any models of that situation you just described?

Ron Edmonds: I am aware of some large models that are impure, and I am aware of some small models that are fairly pure but too small in these kinds of terms to be significant. The large model I can think of is in Michigan, in some instances in California, but those are not pure because they don't go all the way. But

they do demonstrate that it is possible. That is to say, they demonstrate two parts of the formula I gave: One, they demonstrate that it is possible to convene people who represent the community together with people who represent the educational establishment, and for them to come up with a precise definition of pupil mastery of each successive level of schooling. Two, the Michigan model demonstrates the technology by which you take that description of mastery and translate it into assessment measures so that you have the means for determining whether or not it's being done. Now the other models are only the isolated school districts I can think of in places like Florida and California, but those are valuable only in terms of anecdote.

Mary Berry: Even those that you mentioned, have they been written up in any kind of serious journal or things like that?

Charles Moody (?): Michigan is in the process of developing a committee in which they're addressing the high school completion competency skills. They call them exit competency skills. That committee is in the process of putting that on paper, but the first meeting that we had was about two months ago, and that brought various people from various sectors of life in occupations and educational levels, and they just sat down and began to verbalize what they felt exit competency skills should be, and that is going to be placed on the level of saying that every student that graduates from Michigan's high schools should be able to verbalize or write what the skills are that are expected of them when they graduate. Now that will be taken all the way back through, because the skills that are identified for high school completion might be implementable from K through 12 before that skill can actually be developed, so it's not just to say that when you get to the twelfth grade, that skill will be taught. That skill might be in the mastery process from K through 12 all the way to graduation.

Ron Edmonds: See, that's a secondary example. The elementary example is that there are commissions that have already described mastery at various levels

of the elementary grades, and that was done in the context of Michigan's movement from normative assessment to criterion assessment, and the technology people who do the testing had to be given the community's definition of the criterion before they did . . . . And that's why his is an example of secondary and mine is an example of elementary.

Betty Nyangoni: I'd like to say something about that. I have some reservations about how community schools have worked in terms of being really responsive to the needs of the community. Therefore, I guess I'm rather skeptical of that suggestion. However, I think it's worth pursuing. I just have a great number of reservations about that.

Ron Edmonds: I do too, except that I have even more reservations about the status quo.

Betty Nyangoni: I just feel that the theory and concept of community schools, as I have seen them articulated and supposedly implemented, have not represented what I consider collective concerns of a given community. And I think I can look at the ones that we usually look at and mention. I think that unless we do something other than what occurred in the past with the community schools, in assessing what the community really wants, and then transmitting that and translating it, we will still have problems. All I'm saying is, as an educator I think we'll have a great deal of difficulty doing that.

Barbara Jackson: Is that because of organizational constraints, or not being able to find out in practice what the community says they want?

Betty Nyangoni: I think it could probably be both. Other areas as well.

Derrick Bell: I wonder what would happen if you went out into one of the fancy communities here, Lexington or Newton, and tried that process. I would think even going to all the high income, educated people themselves, that you'd come up with a mess in terms of what they wanted to happen in the schools. You'd have a whole range of things. And I wonder whether you would come out worse

if you really --

Walter McCann: You'll find that there's a lot of agreement, but where the disagreement occurs is in what happens in the school. Somebody slapped my kid, or somebody kept so and so after school, or she was unhappy --

Ron Edmonds: I'm going to say one thing in my own defense and be real quick. The alternative to what I said is to leave educators free to use their own judgment about what should be done and whether or not it is being done. I'm being more skeptical about it than any theory of intervention.

Ruby Martin: What would be the reaction of the major civil rights groups that are involved in desegregation litigation to a presentation by a distinguished group of black American educators, lawyers, scholars to a list of items that must be included in all future school desegregation litigation to be pursued? The items would include such things as the things that we have in Atlanta, equal representation of black or minority faculty members, not just teachers, but at other levels. It would include such things as guaranteed compensatory education within some kind of reasonable setting for youngsters who need that kind of work in a desegregated or integrated setting, and it could include a list of all the things that we have pointed out as very real problems that youngsters have encountered and parents' groups have encountered over the past twenty years as a part of the process of desegregation. In other words, to just look at what's happened -- the fallout, the complaints -- and just to go to Jack Greenberg or the board of the Legal Defense Fund and say, twenty years of --- have taught us the following lessons: one, two, three, four, five, and we know that you are not going to stop filing school desegregation cases, and since we know that, we will insist or urge, whatever the right word might be, that as a part of the process for the next twenty years, particularly, when you're talking about metro suits and everything else, that you must include, as a minimum, these kinds of things.

Derrick Bell: I think that the people generally would not be opposed to it. It's what priority it would be given.

Ruby Martin: No, it would be . . . the price for bringing another suit would be to at least have it in as a minimum that as a part of the relief and a guarantee that you will appeal any item thrown out up to the highest levels.

Derrick Bell: They've already done that in a lot of cases. The primary thing is that if you get integration, we'll get quality education.

Ruby Martin: All I'm suggesting is the strategy of calling in the New York Times and the Chicago Defender and the Detroit Free Press and put those guys on the defensive. Just say that these issues are as critical or more critical to mixing of bodies.

Ron Edmonds: Did you read the Sunday New York Times*/? Did you see the space? Did you see how they treated the subject? They did three stories in the New York Times on Sunday on the twentieth anniversary of Brown. One was a news story in which they alluded to a number of people who have raised questions about desegregation as the means, and I'm one of them. And I want you to look very closely at how they treated the people and the context in which they put them. Then I want you to look at the story in the supplement to the Sunday Times and then I want you to look at the fact that Jack Greenberg has half a page in which his full portrait appears, and that article consists exclusively of what Jack Greenberg has to say.

Ruby Martin: Well, the Washington Post is a better newspaper because I got more coverage than he did. I think that there is a way it can be done.

Jim Dyer: This is exactly why Carnegie is one of the agencies supporting the Inc. Fund and others. That's one of the reasons for this seminar. What I'm suggesting to you is that we have copped out by avoiding the answer to that question. The program that is run through the Earl Warren Institute for training

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black lawyers in the South is a kind of convenience; I think it's an honorable cop-out. It avoids the question of what they do with those lawyers. And I don't think we can do that any longer.

Betty Nyangoni: I'd like to go on record supporting Ruby's suggestion. I think that's something that should be done. And I'd like to point out a case that we probably will have in southern Jersey. At issue is integration, the integration of a school district where it's not working, and the problem is that one of the NAACP leaders suggested that he wanted to set up the school system for the areas that were involved, and then he had to retract that statement when the national NAACP suggested that we aren't a separatist organization. To call for separate schools is not in keeping with the National Association for the Advancement of Colored People. But other people were suggesting that perhaps it's time to re-think the NAACP position. It may not be on the national level. In other words, Greenberg might be as powerful as we think he is, but at the same time, there are levels of leadership in the NAACP and in other areas of the civil rights movements, and I took the liberty of duplicating your paper and giving it to our NAACP leader because I think that there are areas of consideration elsewhere on different levels.

Bob Mitchell: I like that idea. The question is, how do you get the people who pay the money to take the position that has to be taken? It was my school board who hired the lawyers and paid $50,000 for the suit, and their primary interest was the mixing of races. I couldn't get my board to deal with the question of how to give relief to the students who are not achieving. That's not their primary concern. Their primary concern is just total integration. So they hired lawyers and were willing to spend public money to support such a case. I think we need to develop some kind of criteria for cases such as this that would give better defense for students who are not achieving, because the people who really control the money are often only concerned about integration. That's

all they want, integration. The most important thing is that black and white children rub shoulders together.

Mary Berry: One of the problems is the acrimony of the debate. It's the approach. I read the Post and what they quoted from Ruby. Although I agree with your position, Ruby, if I were somebody in the NAACP, if I were Jack Greenberg or somebody, praise God, I would probably have been disturbed by the way it was phrased. I think what Derrick said this morning about Jean Fairfax coming around to understanding what had happened in Adams, is important. From now on, if we're going to have a plan, if we're going to have a suit, we want you to take this into account and do this and this. And all praise due to what you've done before and so on. I think that they would be accepted. But it's the way you present it. First of all, you mis-characterize their position, and that's because you don't distinguish the difference exactly. And you do that some, Derrick, in saying that what they want to do is say everything black is inferior; it's not any good, black is inferior, black is bad. And they just want our children to be up with white children. Well, that's mis-characterizing a position, and if you emphasize the differences in approaches and say let's take into account what is happening, I think they would be receptive to it. And at least you'd have a chance of moving in that direction.

Derrick Bell: I was quoting. Now anybody who sat and listened to Ron, who was to the point, I thought, of causea, repeated how much he was an integrationist and then indicated in much calmer terms in his paper a couple of weeks ago the stuff I say here. And to see Jack Greenberg and Nathaniel Jones, the General Council of the NAACP, and Julius Chambers, who's one of the brightest young lawyers born, whom I consider a protege, he named his child after me, get up and attack this man, I mean it wasn't a response; they were attacks. I just don't see it. I differ with you. If Ruby said what she said there, she would be treated as an enemy. They would see her as the enemy and treat her that way.

And Ken Clark is the same way, Roy Wilkins is the same way.

Mary Berry: But it depends on the goal. I mean sometimes you have to be willing to be a little bit tolerant.

Derrick Bell: Their basic goal is to protect their position. And what they see as a threat to their positions is any question of integration. Now surely in situations where there are really horrible differences in facility, or where the black teachers are being fired and where there are so many dropout problems, they go in and represent on that. But that all has a lower level of priority than does the "Let's integrate as many people as we possibly can." Ruby's answer, Ruby's suggestion, seems to me, answers her first question that she raised this morning. There really has to be, in part, a quasi-revolution. That's the only way you're going to change the basic leadership thinking, is if it is attacked and placed under question and they have to re-evaluate their position. And I don't think it's going to happen.

Ron Edmonds: I'd like to make a motion that Ruby be elected chairman immediately and be authorized to approach any necessary parties on my behalf. I will go, Ruby, where they wish to meet us. I will write it in the terms that they are interested in. I will present it in the formate and the tone of voice and what all and so on, and that you know you certainly have my proxy and I'm --

Ruby Martin: That sounds like a put-down.

Ron Edmonds: It's not a put-down. The only thing is that I am skeptical, Ruby. If you have those people's ear, then God knows that I certainly would like you to put together just such an exchange as you suggested. I think it would be incredibly fruitful.

Jim Dyer: What I'm really suggesting is a session which would follow some more strategizing on the part of the people here, especially the three lawyers who obviously have a great deal that they could coordinate to say. That kind of session might well be put together under the auspices of an interested but neutral

party such as the Foundation, or I might think of two or three others who would be likely to be disposed to participate, part of what I call the Carnegie free lunch program. That might be a fruitful exchange. And I'd be happy to host that, in fact, to participate in the strategizing besides. And I think that might be very useful. So rather than ask you to go on a Kamekaze mission, I'll modify that slightly.

Barbara Jackson: We still have to keep the separate agenda of the educational policy questions totally separate from the legal one.

Ken Tollet: I want to underscore the need for the separation of the legal from the educational. I see some problem here. This laundry list, from my viewpoint, is important for school boards, the legislators. But I see some difficulty translating it into adjudication, certainly,adjudication based on the Constitution. I see a justiciability problem in it. Not a problem of standard, but of the manageability of the remedy and the projecting upon the court administrative and bureaucratic type cast, which I don't think the courts would buy. The court wants rules that are manageable and that it can enforce and that they can articulate with some clarity. And I think the point made is important, also the matter of rhetoric, that is, the matter of gaining adherents. Certainly if there's anyone who's sensitive to this, lawyers are. They want to win their cases. If we want to help students get better education, it seems to me we can phrase our arguments, we can state oppositions, in such a way as to gain adherents to decision makers and anyone else who will be useful in accomplishing those objectives. Finally, and I'll make my summary, there are a number of things that bother me. I'm already on record repeatedly for, and my career has been devoted entirely to, a concern for how to preserve predominantly black higher educational institutions. So obviously I'm not opposed to black schools, elementary, secondary, or higher. But a number of problems have come to my mind as a result of this dialogue. One I raised this morning is the question, the big policy question,

to what extent can you change our rhetoric about integration and desegregation without undercutting the great benefits of the civil rights revolution? There is a moral, philosophical underpinning of it in this country. I don't think you can just brush it aside. We've had one reconstruction in this and it's possible to have another. If you read the history of the earlier reconstruction, blacks were in decision making positions, and there was considerable progress being made as far as participation was concerned. There is this matter of community control, which is a matter of governance and participation. There is one problem with community control when you're in a majority white district that wants to do something as they did in Ocean Hill-Brownsville.*/ I'm wondering what legal theory can be developed to get this. Whitcomb v. Chavel**/ and that line of cases, it seems to me, undermine the idea of moving in the direction of community control where the majority are white but you're trying to get some autonomy in the black community. That's the issue that needs to be faced.

Second is a matter of when the blacks take over; the policies continue as before. If the policies continue as before, why don't the outcomes continue as before? I'm familiar with the latest study where the median act has gone down a little in recent years. But there needs to be some inquiry as to why that's the case. I would assume it's because the policies before were not sensitive to black concern. Another problem related to this is a question that was raised at Ron Edmonds' presentation by Herbert Reid when he said, "What good is community control and power if you're going to be managing a disaster area?" There is a problem of resources here. I don't think money is unimportant, as we have been saying around this table. I think that one of the objectives still should be equality of expenditure per pupil; that would carry us a long way and that is

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something that the courts can manage. But more importantly, there has to be communication with the state, maybe moving into state funding, and the question is, how are you going to get the resources into these school districts so that we can do what has to be done to insure quality education? The paper that was given initially, Bob Singleton's paper, is sort of discouraging about how we're going to accomplish it. But it seems to me that that is an important consideration. I think that it is imperative that significant research go on regarding pedagogy, administration, and management of educational institutions from a black perspective, and that there is a need for an institute to be established which is sensitive and responsive to the needs and aspirations of blacks, which, by the way, I would be surprised to find are too much different from the aspirations of whites. The 1973 norms recently published by ACE indicate that the incoming black freshmen want careers and want economic mobility, on the whole. In other words, the question that was asked this morning can be partially answered. There really are blacks who want what whites want, and the question is, what's the best way of obtaining what whites already have, or at least what blacks perceive whites as already having?

Mary Berry: I think we should at least try to present the NAACP people with the suggestion about modifying their approach to these cases. I also think that it is unhelpful to present the issue in terms of Derrick's title, "Constitutional Right or Obsolete Strategy." All that does is get civil rights types uptight.

Bob Mitchell: From a school board member's point of view, I think a position could be available that could assist a school district or parent group that was interested in relief but in fact did not see their total need as just total integration, somebody who could help them explore alternate avenues rather than just have the support of the groups that are for total integration.

Margaret Simms: I think we ought to think more in terms of achieving a certain goal with the minimum expenditure of resources. In many cases, as indicated by

the way in which many large school districts are structured, we're expending too many resources trying to catch up with white people who don't want to be caught up with. During the course of that time, during the Atlanta case, a whole generation of school children have passed completely through the schools without a decision having been reached. Integration or desegregation or whatever you want to call it did not benefit them. And at the rate things are going, if we think in terms of the metropolitan suit you're pursuing, many more generations are going to go through who won't benefit. So at some point we have to stop and turn around and think of alternative strategies that can achieve some of the same goals with less expenditure of time, energy, and money. I think that that basically coordinates some of the different things, because that's certainly what Ruby's indicating. We need to look at those places where we can't have desegregation effectively. And I think we ought to concentrate on some different kinds of strategies that would be successful in line with retitling the paper. Maybe it ought to be phrased something like "Constitutional Right: One of a Series of Policies," which would mean it's not necessarily obsolete, but it's not the only policy.

Ruby Martin: I'm glad that I came, because this has been very helpful to me. Regardless of the title, Derrick, I think your paper really lays it out very well.

Chuck Moody: I think before we can start talking about equality, we're going to have to deal with some equity. We talk about equity, but I think we call it equality, we say we want to spend the same amount or have the same kind. We may have to treat people differently until we undo some things. On the notion of community control, one of my contentions when blacks get control of and get in the policy making position is that it's dead, or critically ill. I say they're dying districts, and so you're really controlling the disaster area, as you say, Ken, which is something that we really ought to look at when we have blacks on

school boards, in superintendencies. How do we expect, how do we support, how do we look to them to divvy up that time, energy, and resources? Do we expect them to be able to undo in a day or a year what took years to do? That's the kind of thing that I think we ought to be addressing, and we ought to have some input from school board members, from school superintendents.

Delbert Gray: I have three things. The first thing I'd like to speak to is the fact that the civil rights cases that are being presented and will probably be presented for some time to come, have a good foundation and can serve us as foundations. Second, the fact that we as educators today, and those of us who are concerned about education, can utilize those cases to begin to develop phases or steps on top of that foundation to work on problems that affect our kids today. And Ruby, as far as lists are concerned, I think that's a good start. I think also that when that comes out, it should be made evident as a general list, and each district that has this problem should begin to look at that list and see what things are proposed for their specific district and not take it as a general statement. Everyone in that district should utilize that list for implementation. Third, my personal concern: In Michigan, over 40,000 students are dropping out each year. This is a problem in addition to integration that we must begin to address. Kids are turning off not only to the revised system of education as we see it, but to the system of education as it is right now or will probably be.

Bernice Miller: As a person who lived in an integrated neighborhood, one of the only ones at the University of Chicago who paid to send her children to a black school, you know where I'm coming from. Now the other thing is that I think we have talked all day without mentioning students and what they think until we got to them. I think that if students are learning to read right now when they're in high school, if we don't get it straight in the next generation we're going to have more Zebra killers than we have. Because if they get talked about in cities where they're trying to integrate and desegregate the way they get talked

about in Boston, it's a wonder we haven't had an outbreak of killing. When you're doing that, and it's in the paper, that somebody's got to bear the burden. And you can read and you know the burden's you. It's got to be destructive and detrimental, and no matter how it comes out, it comes out that black is bad and white is good. And it's implicitly or explicitly said all the time in this particular part of the world, that that's what's happening. And I would drop out too if I were a kid. And I don't know why we're sitting around the table. We'd better do something and we better do it quick or it's going to get worse and worse, and I really think that we're spinning our wheels and maybe we're doing it backwards. If we can't desegregate, or if we can't integrate, then it's all right to do other things, and this is the kind of white mentality kind of thing. If we say we want to do it by choice, we then become separatists, right? I think the better way to do it, for the sake of the sanity of youngsters, is to take both roads. Those of you who feel you can desegregate and integrate, fine. But those of us in places like this ought to by choice stand up and say something to the effect that black kids are not burdens that have to be shared by the metropolitan suburbs who don't want them out there.

Jim Dyer: Without attempting at all to speak to those questions which I am very sympathetic to, the questions that I see have to do with my particular position and the role that the foundations play or can play in this, and I think that role can be shaped at least partly by the recommendations of a group such as this. And I see them breaking down into two specific areas that we can separate out. One is the whole question of legal strategy, and the role of the dichotomy that you've presented here. And I think that can be terribly important and also timely. Some attention can be given to that and some activity around that specific set of questions can be planned and implemented.

The second has to do with a much broader set of issues, much more complex, which I'm really not addressing in this forum but which we've alluded to, and

that's a question of educational research on which many of the legal strategies somehow come to rest after you've integrated, or if you want to integrate, how do you go about measuring that. And about those measurements, there is precious little that is definitive that is now available. Except that daily, at the foundation where I work and at others, proposals are processed and funded which purport or at least try to deal with some of those very complex questions, and you have an ongoing development of materials that three or four years down the road people are going to have to try to develop. There'll be another Jencks, along with somebody else. I'd like to see some black thinkers and educators developing the materials and this other agenda we've been talking about. I think the time is here.

Barbara Jackson: I think it's most appropriate that I follow Jim, because I'm one of those black thinker-educators at a black institution like Atlanta University that I think needs to be given the kind of resources so that we can have black people there that can do this kind of thing. It's not all there now. Fortunately, I'm in charge of a doctoral program in educational administration, supported by the Ford Foundation. It's in its second year. We don't really know how to train a black administrator. I just know down in my gut that being black and a superintendent is different than being white and a superintendent. We've got to find some better ways to let them deal with those problems, how they deal with their black board members. So in that very important field, I see us trying to do some things. We need to reformulate the questions about how black kids learn and why they haven't and all that. We're lucky that we've got a couple of other foundations. Carnegie, I hadn't had contact with before. Spencer Foundation has given Atlanta University grants to do some seed research. We haven't been enough in that mode, we being Atlanta University, so that a lot of people aren't yet into it, but that's one encouragement. The other piece that I think is going to, again, begin to deal with this is the grant Atlanta

Public Schools has gotten from the Danforth Foundation to involve five high school principals along with five high school principals from four other cities on a fellowship basis during the next year to sit around and figure out why it is, or what they're doing in their particular high schools. The other cities are Louisville, Minneapolis, St. Paul, and St. Louis. And I'm going to be working with those five principals, trying to define what the problems are.

Betty Nyangoni: I'd like to say that Derrick's paper was very good, and I would like to go on record as saying that I do agree with the basic underlying assumptions he raises in his paper, and I think it's imperative that we get further feedback and reactions from a wider segment of the black community than is gathered here today.

Chuck Moody: I'd just like to make my last statement and that is something I really believe. As blacks, we have to be united, but we don't have to be uniform, and I just want us to understand that.